IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.7.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.Nos.4960 and 14450 of 1997

W.P.No.4960/1997

B.Ravichandran .. Petitioner

vs.

1.The Govt., of Tamilnadu
rep., by its Secretary
Department of Education
Fort St.George
Madras-600 009.

2.The Director of Collegiate
Education
College Road
Madras-600 006.

3.The Joint Director of Collegiate
Education, Madurai Region
Madurai-625 020.

4.The V.H.N.S.N.College
rep., by its Secretary
Virudhunagar-620 001.

5.C.Karunakaran
Lecturer
Department of Chemistry
V.H.N.S.N.College
Virudhunaar-620 001.

.. Respondents

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W.P.No.14450/1997

C.Karunakaran .. Petitioner

vs.

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1.The State of Tamil Nadu
rep., by its Secretary to Govt.
Education, Science & Technology
Department, Fort St.George
Chennai-600 009.

2.The Director of Collegiate
Education, Chennai-600 009.

3.The Joint Director of
Collegiate Education
Madurai Region
Madurai.

4.V.H.N.S.N.College
rep, by its Secretary and Correspondent,
Virudhunagar-Pincode:620 001.

.. Respondents

Writ Petition No.4960/1997 filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, calling for the records pertaining to proceedings No.N.K.No.01812/91/97-1 dated 28.2.1997 on the file of the 2nd respondent and quash the same.

W.P.No.14450/1997 filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus calling for the records pertaining to the proceedings of the 2nd respondent issued in N.M.No.01812/G1/97-1 dated 28.2.1997, quash the same and directing the 2nd respondent to approve the petitioner's appointment from 2.7.1990 with all consequential service and monetary benefits.

For Petitioners : Mr.R.Subramanian,
in W.P.No.4960/97.

Mr.M.Muthappan, for 5th Respondent
in WP.4960/97 and for the
petitioner in
in W.P.No.14450/97.

For Respondents : Mrs.Shanmugavalli Sekar,
Govt.Advocate, for R1 to R3
in both W.Ps.

Mr.M.Muthappan, for R5.

No Appearance, for R4.

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COMMON ORDER:

Writ Petition No.4960/1997 has been filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari, calling for the records pertaining to proceedings No.N.K.No.01812/91/97-1 dated 28.2.1997 on the file of the second respondent, quash the same.

2.W.P.No.14450/1997 has been filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus calling for the records pertaining to the proceedings of the 2nd respondent issued in N.M.No.01812/G1/97-1 dated 28.2.1997, quash the same and directing the 2nd respondent to approve the petitioner's appointment from 2.7.1990 with all consequential service and monetary benefits.

3.As the issue involved in both the writ petitions are related to each other, a common order is passed to dispose of both the writ petitions.

4.I)W.P.No.4960/1997: The petitioner was appointed as lecturer in Commerce in the 4th respondent college on 1.11.1991 in a permanent vacancy. The appointment was ratified by the 2nd respondent by proceedings dated 4.11.1994 with effect from the date of appointment. While so, the impugned proceedings are passed by the 2nd respondent on 28.2.1997 which was informed through the 4th respondent college, stating that the approval granted to the petitioner from the date of his appointment was cancelled and the approval is now granted from 4.11.94 only. The impugned proceedings further sought to recover the salary for the period from 1.11.1991 to 3.11.94 in 150 monthly instalments.

5.W.P.No.14450/1997: The 5th respondent in W.P.No.4960/1997 is the writ petitioner in this Writ Petition. He was appointed as lecturer in Chemistry in 4th respondent college (the very same college where the writ petitioner in W.P.No.4960/97 is working) on 2.7.1990. But his appointment was approved by the 3rd respondent/Joint Director from the academic year 1993 to 1994 only, not from the date of his appointment. Therefore he sent a representation to the 2nd respondent-director citing the example of another lecturer in the Commerce Department in the very same college (writ petitioner in W.P.No.4960/97), whose services have been regularised with monetary benefit from the date of his appointment. But the 2nd respondent by the impugned proceedings has not only turned down his request, but cancelled the orders passed earlier to the said lecturer in Commerce department regularising the services from the date of his appointment. This order dated 28.2.97 is the impugned order in both the writ petitions.

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6.Heard the learned counsel for the respective parties in both the writ petitions and the learned Government Advocate(Education). I have also perused the documents and the judgments referred to by them in support of their submissions.

7.It is not in dispute that the impugned proceedings dated 28.2.1997 were passed at the instance of the writ Petitioner in W.P.No.14450/1997, who is the 5th respondent in W.P.No.4960/1997.

8.The grievance of the writ petitioner in W.P.No.14450/1997 is that even though he was appointed in a sanctioned post by the 4th respondent college on 2.7.1990, his services were not regularised from the date of his appointment but only from 25.6.93 i.e., from the academic year 1993 to 1994 only.

9.It is also not in dispute that the writ petitioner in W.P.No.4960/1997 was appointed on 1.11.1991 but his services were regularised by the department from 1.11.91 onwards. Therefore citing the example of the writ petitioner in W.P.No.4960/97, the writ petitioner in W.P.No.14450/97 submitted a representation to the 2nd respondent-director requesting him to regularise his services from the date of his appointment as has been done in the other case.

10.By the impugned proceedings, the 2nd respondent-director has not only rejected his request but also cancelled the previous order of approval regularising the services of the writ petitioner in W.P.No.4960/1997 from the date of his appointment and ordering recovery from his salary in 150 instalments.

11.First let me consider the grievance of the writ petitioner in W.P.No.4960/1997. A mere perusal of the impugned order would show very clearly that the same has been passed without even affording an opportunity to the writ petitioner and therefore the same is not only against the basic principles of natural justice, but also the order has been passed in total violation of Sec.39(2) of the Tamil Private Colleges (Regulation) Act, 1976 which governs the 4th respondent college as admitted by the Government in their counter affidavit. Under Sec.39(2) of the Act, only after giving an opportunity to the parties, any appeal preferred under any provisions of the Act should be disposed of. Further ordering recovery of the salary already paid to the writ petitioner that too, in 150 instalments would definitely result in civil consequences and it is trite law that any order passed resulting in civil consequences, should be passed only after affording an opportunity to the persons concerned. That apart, the writ petitioner cannot be blamed even assuming that some benefit was given to him wrongly as he has not made any misrepresentation either to the college or to the Government. In such circumstances,

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the writ petitioner who is not even a party to the appeal should not be burdened with a huge monetary loss without even affording an opportunity to him. Hence I have no hesitation in quashing the impugned proceedings insofar as cancelling the earlier order of regularisation dated 4.11.1994 regularising his services from the date of his appointment and ordering recovery from his salary in 150 instalments.

12.It is also useful to refer to the judgment cited by th learned counsel for the writ petitioner in 2006(1)MLJ 695 (Kanthimathi, S.A. v. Director of School Education, Madras) wherein a learned Single Judge of this court held that when order of recovery has been passed without giving any notice or opportunity, the same is liable to be set aside, especially when there is no misrepresentation by the person against whom the order was passed. The learned Judge following the decision of the Supreme Court reported in 1995(1)SCC 18 (Sahib Ram v. State of Haryana) held as follows:

> "3.A perusal of the impugned order of recovery nowhere discloses that the petitioner has misrepresented or suppressed for the receipt of excess scale of pay. Further, no notice or opportunity was given to the petitioner before the impugned order of recovery was passed and as stated, the petitioner also retired from service.
>
> 4.In the said judgment of the Supreme court, it is clearly stated that since the salary is paid not on account of any misrepresentation made by the appellant and the benefit of higher scale of pay was made by the wrong construction made by the Principal for which the appellant cannot be held to be at fault. The facts in the said judgment applies to the facts in this case also and therefore the impugned order of recovery is quashed. The writ petition is allowed. No costs."

13.In the light of the above discussion on fact and law, the writ petition is allowed quashing the impugned order dated 28.2.1997, insofar as the cancelling the earlier order passed by the Director dated 4.11.1994 regularising the petitioner's services from 1.11.1991 and ordering recovery of the salary received by the petitioner from 1.11.1991 to 3.11.94 in 150 instalments. No costs.

14.Insofar as the W.P.No.14450/1997 is concerned, the grievance of the writ petitioner is that when he was appointed in a sanctioned post his services should have been regularised from the

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date of his appointment and not from 25.6.1993 as regularised by the Joint Director.

15.The contention of the department in this regard in the counter affidavit is that the management ought to have obtained the prior approval of the Director before filling up the vacant post as stated in Rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. It is further stated that only by proceedings dated 8.12.1993, the Director fixed the strength of the Chemistry Department in the college as 14 posts for the academic year 1993-94 and therefore the appointment of the writ petitioner was admitted for grants with effect from the date of the commencement of the academic year 1993-94.

16.The learned counsel for the petitioner relied on an unreported decision of this court dated 29.3.2006 made in W.P.No.28396/2004 wherein a learned Single Judge of this court held as follows:

> "8.At the outset it has to be stated that the petitioner was appointed by the third respondent to the post of Lecturer as against the vacancy that arose due to the retirement of one Dr.A.M.Vasudevan Pillai and as per rules an approval was sought for from the second respondent, which was rejected stating that no prior approval was obtained.
> 9.So, the question that now arises for consideration is as to whether the appointment of the petitioner is well within the sanctioned post. In this context, it would be worthwhile to extract Rule 11(1) of the Rules:
> "The number of teachers employed in a college shall not exceed the number of posts fixed by the Director from time to time, with reference to the academic requirements and norms of work load prescribed by the respective Universities and overall financial considerations".
>
> 10.Thus it is evident from the above, any such appointment of teachers should not exceed the number of posts fixed by the Director. In the present case, the third respondent college has been sanctioned with two posts of Malayalam Lecturers and since a vacancy has arisen due to the retirement of one Dr.A.M.Vasudevan Pillai, the petitioner herein was appointed through direct recruitment process in the said vacancy.

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> 11.Further as regards the other limbs of the rule relating to the norms of the workload and financial consideration also, when there is no reduction of workload in the third respondent college and in the absence of any order passed by the second respondent pointing out any such reduction or financial constraints, it can be held that the appointment of the petitioner is done in accordance with the Rule and therefore, no prior permission is required to appoint the petitioner.
>
> 12.Therefore, it is clear that the order passed by the second respondent is contrary to Rule 11 (1) of the Rules and has to be set aside. Accordingly, the same is set aside. The second respondent is directed to pass the order of approval to the petitioner from the date of his initial appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected WPMP is closed."

17.From the above it is very clear that in the absence of any order passed by the Director pointing out any such reduction, it can be held that the appointment of a person in a sanctioned post in accordance with rules, no prior permission is required.

18.In this case also it is not in dispute that the writ petitioner was appointed in the place of one Dr.A.Chellamani who was working in a permanent post and who resigned from the college, on 22.7.1989 and he was relieved from the management on 17.10.89. Therefore it is very clear that the writ petitioner's appointment was only in an existing and sanctioned permanent vacancy and therefore his services ought to have been regularised from the date of the appointment only. Hence I am inclined to allow the writ petition as prayed for.

19.In the result, the impugned order dated 28.2.1997 is quashed insofar as rejecting the writ petitioner's representation for regularising his services from 2.7.1990 and the 2nd respondent is directed to approve the petitioner's appointment from 2.7.1990 with all consequential service benefits and mandatory benefits. The monetary benefits are directed to be paid to the writ petitioner by the 2nd respondent within three months from the date

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of receipt of copy of this order. The writ petition is allowed accordingly. No costs.

Sks

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to Govt of Tamil Nadu,
Education, Science & Technology
Department, Fort St.George
Chennai-600 009.

2.The Director of Collegiate
Education, College Road, Chennai-600 006.

3.The Joint Director of
Collegiate Education
Madurai Region
Madurai.

4.The Secretary to Government of
Tamil nadu, Education Department,
Fort St George, Chennai 9.

- 1 cc to Mr. R. Subramanian, Advocate SR No. 41560
- 1 cc to the Government Pleader SR no. 41820
- 1 cc to Mr. M. Muthappan, Advocate SR No. 41611
-
  JRG(CO)
- SR/19.7.2007

order,
W.Ps.4960 & 14450/97.

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